

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST**

**FINAL DECISION AND ORDER
WITH VARIANCE**

**CAITLIN M. BEHNKE, R.N.
RESPONDENT.**

DHA Case No. SPS-17-0022
DLSC Case No. 16 NUR 212

0005564

BACKGROUND

On November 6, 2017, Administrative Law Judge Jennifer Nashold (ALJ), Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. On December 14, 2017, the Board met to consider the merits of the PDO. The Board voted to approve the PDO with variance. The PDO is attached hereto and incorporated into this Final Decision and Order with Variance.

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1m) and 441.07(1g), the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3)(b). The Board may make modifications to a PDO, in a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2), provided the Board's decision includes an explanation of the basis for each variance.

In the present case, the Board adopts the PDO in its entirety with a variance to specify that the limitations in this Order also apply to the Enhanced Nurse Licensure Compact (eNLC). During the pendency of this proceeding, Wisconsin joined as a member of the eNLC, in 2017 Wisconsin Act 135. The eNLC allows nurses to have mobility across state borders. Under the eNLC, nurses can provide care to patients in other eNLC states, without having to obtain additional licenses. To ensure the protection of the public, promote rehabilitation, and deter others from engaging in similar conduct, Respondent should be restricted to work in Wisconsin during the pendency of these limitations. Therefore, the Board varies the Order as follows:

ORDER

For the reasons set forth in the attached PDO it is hereby ORDERED that Respondent Caitlin M. Behnke's professional nursing license (license number 164748-30) and her privilege to practice nursing in the State of Wisconsin pursuant to the Nurse Licensure Compact and Enhanced Nurse Licensure Compact are suspended and limited as set forth below.

SUSPENSION

- A.1. The license of Caitlin M. Behnke (license number 164748-30) to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Respondent's privilege to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact or the Enhanced Nurse Licensure Compact are also SUSPENDED for an indefinite period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact or the Enhanced Nurse Licensure Compact under the authority of a Wisconsin license, unless Respondent receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.
- A.4. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing practice for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for the first three (3) months, but any time after three (3) months the suspension may be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C. and D. of this Order for the most recent three (3) consecutive months.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C. or D. of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one (1) provision. The Board or its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.

- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and

rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that she may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of administration, fill or refill of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b) Production of a urine, blood, sweat, nail, hair, saliva or other specimen at a collection site designated by the Approved Program within five hours of notification of a test.
- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than 49 times per year, for at least the first year of this Order. Thereafter, the Board may adjust the frequency of testing on its own initiative at any time.
- C.15. If any urine, blood, sweat, nail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.19. Respondent may work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.20. Respondent shall practice only under the direct supervision of a licensed nurse or other

licensed health care professional approved by the Board or its designee, who has received a copy of this Order.

- C.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for preapproval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated.
- C.22. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- C.23. Prior to commencing practice, Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.24. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from her supervisor at each setting in which Respondent practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.25. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five days of the date of a change.

MISCELLANEOUS
Department Monitor

- D. 1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

DEPARTMENT MONITOR
Department of Safety and Professional Services
Division of Legal Services & Compliance
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved

Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.

- D.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current address and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one (1) year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Board for termination of this Order any time after five (5) years from the date of the initial stay of the suspension.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for nonpayment is a violation of this Order.

Costs of Proceeding

- D.8. Respondent shall pay costs to the Department of Safety and Professional Services. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#164748-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.9. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

IT IS FURTHER ORDERED that Respondent Caitlin M. Behnke, R.N., shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53 707-7190

IT IS FURTHER ORDERED that the terms of this Order are effective the date of the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin this 21 day of December, 2017

By: Sheryl Kraus 
A Member of the Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Caitlin M. Behnke, R.N., Respondent

DHA Case No. SPS-17-0022
DLSC Case No. 16 NUR 212

0005564

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Caitlin M. Behnke, R.N.
4511 Augustine Avenue
Scholfield, Wisconsin 54476

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Amanda L. Florek
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated on September 14, 2017, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Caitlin M. Behnke, R.N. (Respondent), alleging that Respondent engaged in unprofessional conduct by practicing nursing while under the influence of alcohol or illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications, in violation of Wis. Admin. Code § N 7.03(6)(e).

The Division served Respondent on September 14, 2017, by sending a copy of the Notice of Hearing and Complaint to her last known address on file with the Department (4511 Augustine Avenue, Schofield, Wisconsin 54476), via certified and regular mail. Respondent failed to file an Answer to the Division's Complaint.

On October 4, 2017, the Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone prehearing conference for October 18, 2017. Respondent failed to appear at the conference, whereupon the Division moved for default judgment based on Respondent's failure to appear, failure to provide the ALJ with her phone number and failure to file an Answer to the Complaint.

On October 18, 2017, the ALJ issued a Notice of Default and Order against Respondent finding Respondent to be in default and ordering that the Division file a recommended proposed decision and order by November 3, 2017. On October 30, 2017, the Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-21 are taken from the Division's Complaint filed against Respondent in this matter.

1. Respondent Caitlin M. Behnke, R.N., is licensed in the State of Wisconsin as a professional nurse, having license number 164748-30, first issued on July 23, 2008, and current through February 28, 2018.

2. Respondent's most recent address on file with the Department is 4511 Augustine Avenue, Schofield, Wisconsin 54476.

3. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a health and rehabilitation center (Center) located in Weston, Wisconsin.

4. Resident A is allowed to drink alcohol up to three times per day and keeps a bottle of vodka in the medication room.

5. The bottle is marked and dated every time vodka is dispensed to Resident A.

6. The amount in the bottle is verified at every shift change.

7. There is also a sign out sheet for any time vodka is dispensed to Resident A. This is on the "PRN Medication Administration" log.

8. On April 19, 2016, the Center nursing manager (R.N. manager) noticed the bottle of vodka for Resident A was below the line dated March 31, 2016. There were no more recent markings on the bottle.

9. The amount remaining was verified at every shift change. Upon review of the sign out sheet, no vodka had been signed out or dispensed since March 31, 2016.

10. Resident A is alert, is oriented, and is an accurate historian.

11. Resident A denied requesting or consuming any vodka on April 19, 2016.

12. On April 19, 2016, Staff observed that Respondent had two cups of clear colored liquids in front of her. Respondent's face was flushed bright red, her pupils dilated, and her speech was slightly stammered.

13. On April 19, 2016, Respondent initially denied knowing anything about the missing vodka but later stated that, "Oh, yeah I gave her a little after shift change."

14. On April 19, 2016, Respondent tested positive for alcohol with blood alcohol concentration level of 0.152 g/dL. The Center immediately suspended Respondent pending further investigation.

15. In May 2015, Respondent was charged with OWI and completed three months of outpatient treatment and frequent AA meetings. Respondent immediately relapsed following completion of the outpatient treatment.

16. On June 7, 2016, Respondent began treatment at a recovery center for alcohol addiction of nine years' duration. Respondent reported seeking treatment immediately after realizing heavy drinking was causing brain atrophy. While recognizing the importance of abstaining, she could not stop drinking despite legal and employment issues.

17. Respondent has been hospitalized three times for alcohol related issues, including a time when her employer brought her to the emergency room due to tremors and dizziness.

18. On August 29, 2016, Respondent was discharged from a recovery center with a primary diagnosis of severe alcohol use disorder.

19. On August 29, 2016, Respondent voluntarily began treatment at a treatment center in California for substance abuse. Respondent's diagnosis was alcohol addiction.

20. On September 27, 2016, Respondent was discharged from the treatment center in California.

21. On October 4, 2016, Respondent began treatment in California for alcohol use. Respondent was diagnosed with severe alcohol use disorder, mild recurrent episodes of major depressive disorder, and generalized anxiety disorder.

Facts Related to Default

22. The Notice of Hearing and Complaint in this matter were served on Respondent on September 14, 2017, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

23. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

24. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for October 18, 2017. Notice of this prehearing conference

was sent to both parties on October 4, 2017, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference no later than October 13, 2017. The Notice instructed Respondent: "The Respondent's failure to appear at the scheduled conference or hearing may result in default judgment being entered against the Respondent."

25. Respondent failed to provide a telephone number and could not be reached for the prehearing conference held on October 18, 2017.

26. At the conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

27. On October 18, 2017, the ALJ issued a Notice of Default and Order which found Respondent to be in default and required the Division to file and serve, no later than November 3, 2017, a recommended proposed decision and order.

28. The Division timely filed its recommended proposed decision and order.

29. Respondent did not file a response to either the Notice of Default and Order or the Division's submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the October 18, 2017 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on October 18, 2017. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations of Wisconsin Statute and Administrative Code

Following an investigation and disciplinary hearing, if the Board determines that a nurse has committed "[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter" or has committed "[m]isconduct or unprofessional conduct," it may "revoke, limit, suspend or deny a renewal of a license of a practical nurse" Wis. Stat. § 441.07(1g)(b) and (d), respectively.

On April 10, 2016, Respondent stole vodka from a patient, ingested the vodka while on duty, and appeared impaired. Respondent was flush, her pupils were dilated and speech was stammered. She tested positive for alcohol with a blood alcohol concentration of .152 g/dL. Based on this conduct, Respondent violated Wis. Admin. Code § N 7.03(6)(e), by practicing nursing while under the influence of alcohol. As a result, she is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Department requests imposition of the Board's standard impairment order, set forth in more detail the Order section below, which includes an indefinite suspension of Respondent's license and a five-year period of monitoring and alcohol and other drug abuse (AODA) treatment, following which the Board may grant a petition for a return of full licensure. Random alcohol and drug testing are required 49 times per year for at least the first year. The impairment order also prohibits working as a home-care nurse and in other settings where there is no direct supervision and provides for quarterly work reports from employers. It further provides the opportunity for a stay of the suspension after three months if the Board, in its discretion, deems such action appropriate.

The discipline recommended by the Division is appropriate. In order to ensure the protection of the public, promote rehabilitation and deter others from engaging in such conduct, the discipline imposed against Respondent must include alcohol and drug testing to ensure Respondent is abstaining from alcohol use and properly taking prescribed medications. Respondent must also be required to undergo AODA treatment the treater recommends. Respondent has attempted treatment in the past. It is necessary to monitor her current and future treatment in order to ensure she complies with treatment and that her treatment is successful. Respondent should be required to attend alcoholics anonymous meetings or an approved equivalent program at least twice a week and report this attendance quarterly to ensure Respondent has all the support necessary for successful treatment.

Respondent should practice under direct supervision and in a pre-approved work setting to ensure she does not work while impaired. Respondent should not be allowed to work in home health care, hospice, pool nursing, assisted living, agency or in a correctional setting because such work setting will not provide adequate supervision. Respondent should be required to provide a copy of the final order in this proceeding to all her employers. Respondent should arrange for quarterly work reports so her employer can report to the Board if Respondent has any negative behaviors or if Respondent appears to be complying and safe to practice. Additionally, Respondent should be restricted to work in Wisconsin pursuant to the Nurse Licensure Compact during the pendency of the limitations. All of these combined limitations will ensure Respondent is being properly monitored, that her rehabilitation has progressed, and that patients are protected.

This discipline is also consistent with that imposed in similar cases. For example, in *In the Matter of Disciplinary Proceedings Against Nancy Brenden, R.N.*, Order No. 0004108 (June 19, 2015),¹ a nurse drove her car into a ditch while on her way to provide in-home care to a patient. Her blood alcohol concentration was 0.184 g/100 mL and she was subsequently convicted of operating while intoxicated. The Board suspended her license for an indefinite period and limited her license. The Board also imposed the following license limitations: AODA treatment; providing signed releases to the Board or its designee for any treater; AA/NA

¹A copy of the order can be found at <https://online.drl.wi.gov/decisions/2015/ORDER0004108-00011502.pdf>.

meetings not less than twice a week; abstaining from alcohol and use of controlled substances; drug and alcohol screens of not less than 49 times in the first year; no access to controlled substances; practicing only under direct supervision; a pre-approved work setting; no home health, hospice, pool, assisted living or agency nursing practice; showing a copy of the order and all subsequent orders immediately to supervisory personnel where she works as a nurse; and submission of work reports.

In addition, in *In the Matter of Disciplinary Proceedings Against Stacey L. Medved, R.N.*, Order No. 0003741 (Feb. 12, 2015),² a nurse's supervisor found her asleep at the nurses' station. When she was awoken, the nurse displayed impaired behaviors, she refused a reasonable suspicion drug screen, and a search of the bags she left behind revealed four empty bottles of wine that belonged to a resident and which she did not have permission to take or consume. She subsequently admitted to consuming the bottles of wine at work and having a problem for which she was seeking treatment. The Board suspended the nurse's license indefinitely and limited her license. The limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year; participating in treatment; providing a copy of the order to her employer; complying with treatment recommendations; keeping releases on file with all treatment facilities; attending AA/NA meetings at least twice a week; abstaining from use of alcohol and use of controlled substances except when prescribed; notifying the Department Monitor of all prescribed medications as well as use of any over the counter medications; practicing under direct supervision; not working in home health care, hospice, pool, assisted living or agency setting; arranging for quarterly work reports from her supervisor; and practicing only in Wisconsin during the pendency of the limitations.

Given the similar circumstances, Respondent should have similar discipline as that imposed in *Brenden* and *Medved*.

Costs

The Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. See Wis. Stat. § 440.22(2). In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Department has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. Factors have included: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008). It is within the Department's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

² A copy of the order can be found at <https://online.drl.wi.gov/decisions/2015/ORDER0003741-00010854.pdf>.

The Division has proven all counts alleged. The factual allegations were deemed admitted and there is no argument to indicate any factual findings or litigation were unnecessary. Respondent's conduct is of a serious nature. Accordingly, the Division is seeking an indefinite suspension of Respondent's license with significant limitations on Respondent's nursing license. Respondent has failed to cooperate with the disciplinary process. By nature of being in default, Respondent has made no argument concerning whether costs should be assessed against her. Furthermore, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

Accordingly, IT IS HEREBY ORDERED that Respondent Caitlin M. Behnke's professional nursing license (license number 164748-30) and her privilege to practice nursing in the State of Wisconsin pursuant to the Nurse Licensure Compact are suspended and limited as set forth below.

SUSPENSION

- A.1. The license of Caitlin M. Behnke (license number 164748-30) to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Respondent's privilege to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact under the authority of a Wisconsin license, unless Respondent receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.
- A.4. Upon a showing by Respondent of continuous, successful compliance for a period of at least five years with the terms of this Order, including at least 600 hours of active nursing practice for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for the first three months, but any time after three months the suspension may be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three consecutive months.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation

of the same provision or violation of more than one provision. The Board or its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that she may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of administration, fill or refill of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for

the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b) Production of a urine, blood, sweat, nail, hair, saliva or other specimen at a collection site designated by the Approved Program within five hours of notification of a test.
- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than 49 times per year, for at least the first year of this Order. Thereafter, the Board may adjust the frequency of testing on its own initiative at any time.
- C.15. If any urine, blood, sweat, nail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.19. Respondent may work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.

- C.20. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee, who has received a copy of this Order.
- C.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for preapproval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated.
- C.22. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- C.23. Prior to commencing practice, Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.24. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from her supervisor at each setting in which Respondent practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.25. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five days of the date of a change.

MISCELLANEOUS
Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order.

Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.

- D.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current address and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Board for termination of this Order any time after five years from the date of the initial stay of the suspension.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.8. Respondent shall pay costs to the Department of Safety and Professional Services. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#164748-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

D.9. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

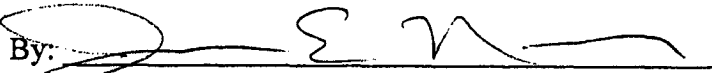
IT IS FURTHER ORDERED that Respondent Caitlin M. Behnke, R.N., shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

IT IS FURTHER ORDERED that the terms of this Order are effective the date of the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on November 6, 2017.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By: 
Jennifer E. Nashold
Administrative Law Judge